

**IN THE UNITED STATES DISTRICT COURT OF TENNESSEE
FOR THE WESTERN DISTRICT, WESTERN DIVISION**

JENNIFER DUNN,

Plaintiff,

VS.

ALLSTATE INSURANCE COMPANY,

Defendant.

)
)
)
)
)
)
)
)
)
)

Docket No.: 2:10-cv-02745

**DEFENDANT ALLSTATE INSURANCE COMPANY'S
MOTION FOR LEAVE TO AMEND ANSWER**

Comes now Defendant Allstate Insurance Company, by and through counsel, and moves this Court, pursuant to Rule 15 of the Federal Rules of Civil Procedure, for leave to amend its Answer to elaborate on its Third Defense regarding Plaintiff's violations of the insurance policy. Federal Rule of Civil Procedure 15 provides that a party may amend its pleading "with the opposing party's written consent or the court's leave."

Defendant seeks to supplement and amend its Answer to include the following italicized language in its Third Defense:

THIRD DEFENSE

Defendant would state that it is not liable to Plaintiff for any sum because Plaintiff violated those provisions of the insurance policy set forth below:

GENERAL

Misrepresentation, Fraud or Concealment. We do not cover any loss or **occurrence** in which any **insured person** has concealed or misrepresented any material fact or circumstance.

Action Against Us. No one may bring an action against **us** unless there has been full compliance with all policy terms.

SECTION I – LOSSES WE DO NOT COVER

- C.8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs: a) may be reasonably expected to result from such acts; or b) is the intended result of such acts. This exclusion applies regardless of whether or not the **insured person** is actually charged with, or convicted of, a crime.

SECTION 1 – CONDITIONS

3. **What You Must Do After A Loss.** In the event of a loss to any property that may be covered by this policy, **you** must:
(d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies, which **we** may reasonably request to examine and permit **us** to make copies.
12. ***Action Against Us.*** No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which **Section 1 Conditions** applies, unless:
a) *there has been full compliance with all policy terms.*

A violation of any of these provisions of the insurance policy is a complete and absolute defense to payment herein.

Allstate Insurance Company respectfully requests that this Court grant its Motion and permit it to file an amended Answer that incorporates the above language to its Third Defense.

Respectfully submitted,

RAINEY, KIZER, REVIERE & BELL, P.L.C.

By: /s/ Russell E. Reviere
Russell E. Reviere (07166)
Attorneys for Defendant
209 East Main Street
P. O. Box 1147
Jackson, TN 38302-1147
(731) 423-2414

CERTIFICATE OF CONSULTATION

Attorneys for Defendant certify that we spoke with Mr. Ronald T. Riggs, Attorney for Plaintiff, on February 15, 2011, regarding Defendant's Motion to Amend Answer. Plaintiff's Counsel did not object to Defendant's amendment and agreed to sign a consent order granting Defendant's Motion to Amend Answer.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was forwarded by electronic means through the Court's ECF System to Ronald T. Riggs, 3201-100 N. Main Building, Memphis, TN, counselor of record for Plaintiff.

This the 15 day of February, 2011.

 /s/ Russell E. Reviere